



Cal/EPA

State Water
Resources
Control Board

Mailing Address:
P.O. Box 100
Sacramento, CA
95812-0100

901 P Street
Sacramento, CA
95814
(916) 657-0926
FAX (916) 657-2127



Pete Wilson
Governor

FEB 10 1997

Mr. Sam Collinson
Regulatory Branch
Office of the Chief of Engineers
U.S. Army Corps of Engineers
ATTN: CECW-OR
20 Massachusetts Avenue NW
Washington, D.C. 20314-1000

Dear Mr. Collinson:

**U.S. ARMY CORPS OF ENGINEERS (CORPS) REQUEST FOR WATER
QUALITY CERTIFICATION OF NATIONWIDE PERMIT (NWP) PROGRAM:
DECISION ON CERTIFICATION.**

The Corps published its *Final Notice of Issuance, Reissuance, and Modification of Nationwide Permits* in the Federal Register on December 13, 1996 triggering the start of the 60-day review period [33 CFR 325.2(b)(ii)] for states to act on water quality certification. In my letter to you dated January 9, 1997, I requested a time extension to allow the State sufficient time to take appropriate actions on all of the NWPs. The Corps has verbally denied my request; consequently, I am taking this interim action to allow adequate time to complete our process for review and consideration of the NWP program.

Certification of an NWP requires a finding by the State that the activities permitted by the NWP will not violate water quality standards individually or cumulatively over the term of the permit. Certification must be consistent with the requirements of the Federal Clean Water Act (CWA), the California Environmental Quality Act (CEQA), the California Endangered Species Act (CESA), and the State Water Resources Control Board's (SWRCB) mandate to protect beneficial uses of waters of the State. In California, the broad scope of the NWPs includes activities which may have the potential to cause significant adverse environmental impacts.

Relying on all the information available to assess the potential impacts, the NWPs have been grouped into three classes. Consistent with this assessment of water quality impacts I am taking the following actions:



Our mission is to preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.

FEB 10 1997

1. I hereby certify all Class 1 NWP's subject to the Conditions and Limitations summarized in Table 1 and described thereafter.

Class 1 NWP's are Categorically Exempt from the provisions of CEQA. Activities authorized under these permits should not result in more than minimal individual or cumulative impacts.

TABLE 1: CLASS 1 NWP's

	DESCRIPTION	FINAL ACTION
1	Aids to Navigation: Allows the placement of U.S. Coast Guard (USCG)-approved navigational aids.	Certify subject to Category I conditions and limitations.
4	Fish and Wildlife Harvesting: Allows fish and wildlife harvesting devices and activities, including shellfish seeding (but not in wetlands or sites that support submerged aquatic vegetation).	Certify subject to Category I conditions and limitations.
5	Scientific Measurement Devices: Allows gages, recording devices, water quality testing and improvement devices, and similar structures. Up to 25 cubic yards of fill is also authorized for weirs and flumes constructed primarily to record water quantity and velocity. Notification is required for fill of greater than 10 cubic yards.	Certify subject to Category I conditions and limitations, and Notification Requirements.
6	Survey Activities: Allows core sampling, seismic exploration, and plugging of exploration bore holes.	Certify subject to Category I conditions and limitations, and Notification Requirements.
9	Structures in Anchorage Areas: Allows placement of structures to facilitate mooring of vessels within anchorage areas established by the USCG.	Certify subject to Category I conditions and limitations.
10	Mooring Buoys: Allows non-commercial, single-boat mooring buoys.	Certify subject to Category I conditions and limitations.
11	Temporary Recreation Structures: Allows temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events. Structures must be removed within 30 days after use has been discontinued.	Certify subject to Category I conditions and limitations, and Notification Requirements.
20	Oil Spill Cleanup: Allows cleanup of oil and hazardous substances providing work is done in accordance with Federal regulations and any existing State contingency plans, and has the concurrence of the Federal Regional Response Team.	Certify subject to Category I conditions and limitations, and Notification Requirements.
22	Removal of Vessels: Allows minor discharges of fill in connection with removal of disabled or abandoned vessels or man-made obstructions to navigation.	Certify subject to Category I conditions and limitations.

FEB 10 1997

24	State Administered Section 404 Programs: Allows "any activity permitted by a state administering its own Section 404 permit program".	Certify.
28	Modification of Marinas: Allows the reconfiguration of existing dock space in an authorized marina. No dredging or expansion of any kind would be permitted.	Certify subject to Category I conditions and limitations, and Notification Requirements.
29	Single-Family Housing: Discharges of dredged or fill material into non-tidal waters of the United States, including non-tidal wetlands for the construction or expansion of a single-family home and attendant features for an individual permittee subject to certain conditions and limitations.	Certify subject to Category I conditions and limitations, and Notification Requirements.
30	Moist Soil Management for Wildlife: Allows discharges of dredged or fill material into non-tidal wetlands necessary to manage, construct, and/or maintain habitat and feeding areas for wildlife. NWP applies to Federally-owned or managed and State-owned or managed property.	Certify subject to Category I conditions and limitations, and Notification Requirements.
32	Completed Enforcement Actions: Allows any structure, work, or discharge which is in compliance with a final Federal court decision, consent decree, or settlement agreement resulting from a Federal enforcement action under Section 404 or Section 10.	Certify subject to Category I conditions and limitations, and Notification Requirements.
34	Cranberry Production Activities: Allows discharges associated with expansion or modification of existing cranberry operations. The total affected area cannot exceed 10 acres and there can be no net loss of wetland acreage.	Certify subject to Category I conditions and limitations, and Notification Requirements.
36	Boat Ramps: Allows construction of boat ramps, provided that (1) the discharge does not exceed 50 cubic yards of rock, stone, gravel, or precast concrete; (2) the ramp is not wider than 20 feet; (3) the base is of stone or other "suitable" material; (4) the excavation is limited to the area necessary and excavated material is removed; and (5) no material is placed in SAS including wetlands.	Certify subject to Category I conditions and limitations, and Notification Requirements.
38	Cleanup of Hazardous and Toxic Waste: Allows cleanup of hazardous or toxic waste, performed, ordered, or sponsored by an authorized governmental entity or resulting from a court order or settlement.	Certify subject to Category I conditions and limitations, and Notification Requirements.

2. I hereby deny all Class 2 NWPs without prejudice as an interim action to allow adequate time for the SWRCB staff to develop conditions and prepare a negative declaration for the Class 2 NWPs.

Class 2 NWPs are those which may be certified if additional conditions and restrictions are developed to ensure that all potential impacts have been mitigated to a level of insignificance. Class 2 NWPs authorize activities that

FEB 10 1997

may individually or cumulatively result in significant adverse impacts to the environment. If appropriate conditions/limitations are not developed for certain activities, certification of those activities may be denied. SWRCB staff will prepare and circulate a Negative Declaration for Class 2 NWP. My goal is to be in a position to reconsider certification of the Class 2 NWP by August 1997. In the interim, water quality certification applications will be processed on an individual project basis.

CLASS 2 NWPs

2	Structures in Artificial Canals	27	Wetland and Riparian Restoration and Creation Activities
3	Maintenance	31	Maintenance of Existing Flood Control Projects
12	Utility Line Backfill	33	Temporary Construction, Access, and Dewatering
15	USCG Approved Bridges	35	Maintenance Dredging of Existing Basins
18	Minor Discharges	37	Emergency Watershed Protection
19	25 Cubic Yard Dredging	40	Farm Buildings

3. I hereby deny without prejudice all Class 3 NWPs. Class 3 activities may individually or cumulatively have a significant effect on the environment. These NWPs are extremely difficult to condition on a Statewide basis to ensure that the activities authorized would not result in significant adverse impacts, or may result in Federal preemption problems. A decision to deny any NWP may be reconsidered at a future time. Class 3 projects are not precluded in California. As has been the case with all NWPs for the past five years, water quality certification applications will be processed on an individual project basis.

CLASS 3 NWPs

7	Outfall Structures	17	Hydropower Projects
8	Oil and Gas Structures	21	Surface Mining
13	Bank Stabilization	23	Approval of Categorical Exclusions
14	Road Crossing	25	Structural Discharge
16	Return Water Upland Disposal Areas	26	Isolated Headwaters Discharge

FEB 10 1997

CONDITIONS AND LIMITATIONS OF CERTIFICATION

CATEGORY I: Category I conditions/limitations apply to all Class I NWP's.

1. **Porter-Cologne Water Quality Control Act:** All permitted activities shall comply with all requirements of the *California Porter-Cologne Water Quality Control Act*.
2. **Non-Severability:** If any conditions are found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.
3. **Water Diversion and Use:** Certification is denied for any activity involving a new or increased diversion or impoundment of water, unless the SWRCB has already approved a water rights permit, or such diversion or impoundment is solely for the purpose of drainage or flood control.
4. **Other Federal Permits and Licenses:** Certification is denied for any activity requiring the issuance or renewal of more than one Federal permit or license.

NOTIFICATION: The permit applicant will be required to provide notification of the proposed activity to the SWRCB and the appropriate Regional Water Quality Control Board (RWQCB). Notification requirements apply to select Class I NWP's (see Table 1).

Notification Requirements: Prior to commencing work on the proposed activity, the applicant must submit to the appropriate RWQCB and the SWRCB a notification containing at a minimum the information listed below. If a Preconstruction Notification (PCN) is required as part of the Corps' Section 404 permit, the PCN may be used instead. To avoid project delays, the applicant should submit the notification as early as possible. If the applicant is not notified by the RWQCB within 30 days of the postmarked date of the Notification, the applicant may assume that the project meets the conditions of certification.

1. **Application Information:** Name, full address, and daytime telephone number of the responsible party or parties.
2. **Site Information**
 - a. Address (including city and county), assessor's parcel number, and if available, the longitude and latitude of the project site.

FEB 10 1997

- b. Name and location of water bodies or special aquatic sites, including wetlands, which are affected either directly or indirectly by the project.
3. **Project Information:** Brief description of the overall activity or project, including a brief description of any related activities to be developed as the result of the project.
4. **Discharge Information:** If the activity involves the discharge of dredged and/or fill materials into a wetland or other water body, describe the types of material being discharged and the amount of each type cubic yards. Quantify the total surface area of wetlands or other waters to be filled.
5. **Other Permits/Approvals:** If any other State, Federal, or local agency(ies) have been contacted for project approval, list the agency(ies) contacted.
6. **Applicant Signature and Statement:** The applicant notification must be signed by the applicant. The notification must include a statement that the submitted information is complete and accurate.

APPEAL RIGHTS

If the Corps, as applicant for Section 401 Water Quality Certification, disagrees with this decision, it has the right to seek relief via petition for review by the SWRCB, in accordance with the California Code of Regulations Section 3867.

Thank you for your cooperation. As I stated earlier, it is our intention to certify as many NWP's as possible, consistent with protection of beneficial uses of water under

California law. If you require further assistance, please telephone Marla Lafer, the staff person most knowledgeable on this issue, at 916/657-0926. You may also call William R. Campbell, Chief of the Nonpoint Source Loan Unit, at 916/657-1043.

Sincerely,

ORIGINAL SIGNED BY

Walt Pettit
Executive Director

